

**IN THE MATTER OF**  
**COMPLAINTS AGAINST THE PROGRESSIVE CONSERVATIVE**  
**ASSOCIATION OF ALBERTA, DARYL KATZ, THE KATZ GROUP AND**  
**PAUL MARCACCIO IN RELATION TO**  
**THE SUM OF \$430,000 CONTRIBUTED TO**  
**THE PROGRESSIVE CONSERVATIVE ASSOCIATION OF ALBERTA**  
**ON APRIL 16, 2012**

**DECISION OF O. BRIAN FJELDHEIM**  
**CHIEF ELECTORAL OFFICER OF ALBERTA**

Complaints were filed with my Office in relation to \$430,000 that was contributed to the Progressive Conservative Association of Alberta ("PCAA") on April 16, 2012.

I appointed a team of investigators under Section 5(1) of the *Election Finances and Contributions Disclosure Act* ("the Act"). The team was comprised of retired Justice Ernest A. Marshall, Don Vander Graaf and Dave Davies. Their work was thorough, fair and objective. They dedicated over 700 hours to their work. Their work included conducting 19 interviews and gathering extensive documentary evidence. The results of the investigation were provided to me in 3 binders, which I have examined. In addition, Mr. Marshall provided me with a report that is the foundation for my decision.

My findings in relation to the complaints are as follows:

**Factual Basis**

Daryl Katz contacted Barry Heck on April 10, 2012 to offer help to the PC Party during the election campaign. Mr. Heck was an acquaintance of Mr. Katz of 20 years, a lawyer and volunteer with the provincial PC Party. Mr. Katz agreed to collect funds through business associates and friends and turned matters over to the Vice President of the Katz Group, John Karvellas, on April 14, 2012.

Mr. Heck and Mr. Karvellas also involved Robert Hawkes and Grant Borbridge, both Calgary PC workers and lawyers, in emails and phone conversations. Mr. Borbridge was the Southern Alberta Finance Chair for the PCAA. There was discussion about collection of certified cheques and wire transfers, but these were considered inefficient in the circumstances.

Because of a perceived urgency to utilize funds to purchase advertising during the final week of the campaign, the legal propriety of a bulk donation was discussed and subsequently decided upon. Katz Group Properties Inc. (KGPI) obtained a \$430,000 bank draft on April 16, 2012. It was picked up by a member of the PCAA on the same date and delivered to the Edmonton PC office.

At the time the draft was being purchased, Mr. Karvellas forwarded a letter to Mr. Heck confirming the draft and requesting that receipts be issued to the following 17 contributors:

Katz Group Canada Inc.	\$30,000
Daryl Katz	\$30,000
Renee Katz	\$30,000
Barry Katz	\$30,000
Ida Katz	\$30,000
John D. Karvellas	\$25,000
Karvellas Consulting Inc.	\$25,000
Brad Gilewich	\$25,000
Brad Gilewich Professional Corporation	\$25,000
Paul Marcaccio	\$25,000
Paul Marcaccio Professional Corporation	\$25,000
J. Robert Black Professional Corporation	\$25,000
James Low & Associates Inc.	\$25,000
SPC Investments Ltd.	\$25,000
Darren Durstling <sup>1</sup>	\$20,000
Guy Scott <sup>1</sup>	\$20,000
Laurie Anderson	\$15,000

Mr. Borbridge and Mr. Heck received letters or emails from the contributors or their agents confirming each of their contributions and addresses. The addresses were required for the official receipts issued by the PCAA.

All 17 contributors paid the respective amounts to KGPI on or soon after April 16, 2012.

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<sup>1</sup> The investigation showed, through confirming emails sent on April 16, 2012 and through official contribution receipts, that contributions initially attributed to Darren Durstling and Guy Scott were attributable to the Durstling Family Trust and the Scott Family Trust, respectively.

## **A. Allegations Against Daryl Katz and the Katz Group**

### **Allegation #1: That Mr. Katz or the Katz Group exceeded the \$30,000 contribution limit set out in Section 17(1)(b) of *the Act*.**

I have concluded that this allegation is unfounded.

Section 17 of *the Act* limits contributions to \$30,000 from each person or corporation during any campaign period, less any amount contributed to the party in that calendar year. Section 17(1) provided:

**17(1)** Contributions by any person, corporation, trade union or employee organization to registered parties, registered constituency associations or registered candidates shall not exceed

- (a) in any year,
  - (i) \$15 000 to each registered party, and
  - (ii) \$1000 to any registered constituency association, and \$5000 in the aggregate to the registered constituency associations of each registered party,and
- (b) in any campaign period,
  - (i) \$30 000 to each registered party less any amount contributed to the party in that calendar year under clause (a)(i), and
  - (ii) \$2000 to any registered candidate, and \$10 000 in the aggregate to the registered candidates of each registered party.

There was no breach of Section 17(1)(b) because there was clear identification of the funds connected with the actual contributors and each contribution respected the \$30,000 limit.

Without more, a single payment of \$430,000 would have exceeded the limit for a single contribution. However, the investigation revealed that this was not a single contribution of \$430,000. There were in fact 17 contributions which totalled \$430,000. Contemporaneously with the payment, Mr. Karvellas provided the PCAA with a list specifying the actual contributors and respective amounts of their contributions. Ultimately, KGPI, the corporation which provided the bank draft, was not a contributor at all.

Although no specific complaint was made that any of the donor corporations were "associated corporations" within the definition of Section 1(3) of *the Act*, the investigation examined that possibility to ensure that contribution limits were not exceeded.

Associated corporations as determined under Section 256 of the *Income Tax Act (Canada)* were considered to be a single corporation by Section 1(3) of *the Act* and their aggregate contributions were subject to the contribution limits established by Section 17 of *the Act*.

The investigative team received confirmation that none of the donor corporations are associated corporations as determined under Section 256 of the *Income Tax Act*.

I am satisfied that neither Mr. Katz nor the Katz Group exceeded the \$30,000 contribution limit set out in Section 17(1)(b) of *the Act*.

**Allegation #2: That Mr. Katz or the Katz Group contributed funds to the PCAA through contributors, such funds not actually belonging to that person or corporation, or funds that had been given or furnished to that person or corporation for the purpose of making a contribution of those funds to the PCAA contrary to Section 34(1) of *the Act*.**

I have concluded that this allegation is unfounded.

Section 34(1) of *the Act* provided:

**34(1)** Subject to section 26, no person, corporation, trade union or employee organization shall contribute to any registered party, registered constituency association or registered candidate funds not actually belonging to that person, corporation, trade union or employee organization, or any funds that have been given or furnished to the person, corporation, trade union or employee organization by any persons or groups of persons or by a corporation, trade union or employee organization for the purpose of making a contribution of those funds to that registered party, registered constituency association or registered candidate.

Based on the evidence from the investigation, I have determined:

- Each of the contributors confirmed their respective commitment to the PCAA.
- When the bank draft went forward, each of the contributors was identified as to their share of the total amount.

- Each of the contributors subsequently provided payment to KGPI for their share of the bank draft. The investigators obtained copies of the financial records documenting the payment to KGPI by each of the 17 contributors. The investigation showed that
  - the period between the bank draft being sent until payment by the contributor to KGPI ranged from two or three hours to eighteen days.
  - each of the payments from the contributors came from their own funds. No contribution was made from funds that did not actually belong to a contributor or from funds that were given or furnished to any contributor for the purpose of making a contribution of those funds to the PCAA.
- There was no evidence of any agreement on the part of Mr. Katz or the Katz Group to reimburse any contributors. There was direct evidence to the contrary, including a statutory declaration from Mr. Katz.

In simple terms, KGPI was promptly and fully repaid by each contributor. In the final analysis, KGPI made no contribution to the PCAA. KGPI essentially lent money to the contributors for a brief period and facilitated the pooling of their contributions through a single bank draft.

*The Act* did not prevent contributors from borrowing monies to make contributions to political entities so long as the loan was repaid. *The Act* did not prevent contributors pooling amounts to contribute through a single bank draft. What *the Act* required was that each contributor and each contributor's share of the total be identified.

Unincorporated groups of people can make collective contributions so long as the individual sources and amounts of the contributions are provided to the registered party (see Section 27 of *the Act*). The amounts attributable to any person in the group are contributions of that person.

In my view, the purposes of attribution of amounts to individual contributors in a group-organized contribution are transparency and accountability. Sections 27 and 34 enable the Chief Electoral Officer to monitor compliance with contribution limits under Section 17 of *the Act* and to ensure that the actual sources of electoral financing are identified and made public.

Based on the investigation, I am satisfied that each of the contributors contributed to the PCAA from their own funds. No funds were contributed to the PCAA that did not belong to a contributor. None of the contributions were funds that had been given or furnished to a person for the purpose of making a contribution of those funds. There was no breach of Section 34.

**Allegation #3: That Mr. Katz made a contribution to the PCAA when he was not ordinarily resident in Alberta contrary to Section 16 of *the Act*.**

I have concluded that this allegation is unfounded.

Section 16 provided:

**16** No prohibited corporation, person ordinarily resident outside Alberta or trade union or employee organization other than a trade union or employee organization as defined in this Act shall make any contributions to a registered party, registered constituency association or registered candidate.

There is no definition of ordinary residence in *the Act*.

The *Election Act*, Section 1(2) provides the following definition, which I have used for determining ordinary residence under *the Act*: "the place where the person lives and sleeps and to which, when the person is absent from it, the person intends to return."

There are two elements to ordinary residence: an objective one—where the person lives and sleeps; and a subjective one – when a person is away, where he intends to return.

A person may have more than one residence. Indeed numerous Albertans own second residences, many outside Alberta. However, for the purposes of the *Election Act*, and by extension for *the Act*, a person can only have one ordinary residence.

Mr. Katz provided a statutory declaration that in April 2012 his ordinary residence was Edmonton, Alberta.

Further, objective evidence of his ordinary residence in Alberta is that Mr. Katz has an Alberta Operator's Licence and Alberta Health Card. The documentation for various corporations in the Katz Group shows his residence as director and officer to be Edmonton.

I am satisfied that in April 2012, Mr. Katz was ordinarily resident in Alberta and that he did not breach Section 16 of *the Act*.

**B. Allegations against the PCAA**

**Allegation #1: That the PCAA knowingly accepted contributions in excess of the contribution campaign limit of \$30,000 contrary to Section 19(1) of *the Act*.**

I have concluded that this allegation is unfounded.



Section 19 provided:

**19(1)** No registered party, registered constituency association or registered candidate and no person on its or the candidate's behalf shall knowingly accept any contributions in excess of the limits imposed by section 17.

I am satisfied the payment, advanced through the bank draft, came from 17 individual contributors and not from a single contributor. As I have indicated above, the PCAA was aware of that when it accepted the contributions. The PCAA did not knowingly accept any contributions in excess of the limits imposed by Section 17. There was no breach of Section 19 of *the Act* by the PCAA.

**Allegation #2: That the PCAA knowingly accepted a contribution not belonging to the contributor contrary to Section 34(2) of *the Act*.**

I have concluded that this allegation is unfounded.

Section 34(2) of *the Act* provided:

**(2)** No registered party, registered constituency association or registered candidate and no person on its or the candidate's behalf shall solicit or knowingly accept any contribution contrary to subsection (1).<sup>2</sup>

While the PCAA knew of the single payment through a bank draft, the evidence is that its officials had been told that they were receiving contributions from the 17 identified contributors. The facts show this to have been correct—there were 17 individual contributors.

I am satisfied that there was no breach of Section 34(2) of *the Act*.

**Allegation #3 - The PCAA knowingly solicited or accepted a contribution from one or more persons who were ordinarily resident outside Alberta contrary to Section 35(1) of *the Act*.**

I have concluded that this allegation is unfounded.

Section 35(1) of *the Act* provided:

**35(1)** No registered party, registered constituency association or registered candidate shall, directly or indirectly,

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<sup>2</sup> Subsection (1) of course deals with contributions not belonging to the contributor.

- (a) knowingly solicit or accept contributions from any person ordinarily resident outside Alberta,....

Eight contributions were made by individuals. Each of the eight contributors provided an Alberta address to the PCAA to be used for the distribution of official receipts. Given that the individuals provided an Alberta address, there was no reason for the PCAA to question the ordinary residence of the contributors.

Based on the investigation, it was ultimately determined that one contributor worked in Alberta, but was not ordinarily resident in Alberta. Please refer to the discussion below regarding Paul Marcaccio.

I am satisfied that the PCAA did not knowingly solicit or accept contributions in contravention of Section 35(1).

### **C. Allegation against Paul Marcaccio**

**Allegation #1: That Mr. Marcaccio made a contribution to the PCAA on April 16, 2012 when he was not an ordinary resident of Alberta contrary to Section 16 of the Act.**

I have concluded that this allegation is well founded.

Part of the monies contributed through the bank draft advanced through KGPI on April 16, 2012 was a contribution from Paul Marcaccio. To repay KGPI he wrote a personal cheque to KGPI for \$25,000.

He requested that his receipt be forwarded to his Edmonton office address.

The investigation revealed the following about Mr. Marcaccio:

- Mr. Marcaccio is the Chief Financial Officer of the Katz Group of corporations.
- His personal cheque shows his address is a Toronto residence.
- He is a director of several of the Katz corporations. The Katz corporations which name him as a director show his address to be in Toronto.
- His Professional Corporation maintains an office in Edmonton and one in Toronto.
- He spends approximately half of his working time in Edmonton and half in Toronto.
- He holds an Ontario Operator's Licence and Ontario Health Card.



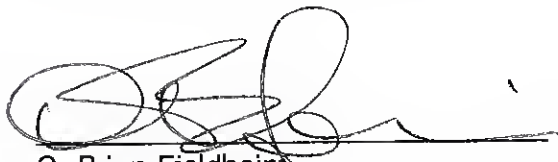
Given the facts stated above, while Mr. Marcaccio has a significant presence in Alberta, I am satisfied that he is ordinarily resident outside Alberta. In my view, he is ordinarily resident in Toronto, Ontario.<sup>3</sup>

It is my intention to issue a letter of reprimand to Mr. Marcaccio under Section 51 of *the Act*.

It is open to the Chief Electoral Officer to make an order under Section 51.1 of *the Act* directing a political entity to return a contribution where that contribution has been made in contravention of *the Act*. An order under Section 51.1 can be made even where there is no evidence of any contravention by the political entity. The purpose of that section is to ensure that a political entity does not keep contributions made in contravention of *the Act*, even if the political entity did not knowingly solicit or accept them. I intend to direct the PCAA under Section 51.1 of *the Act* to return the monies contributed by Mr. Marcaccio in breach of *the Act*. As noted above, I have determined that the PCAA did not contravene *the Act*.

Before such an order is made, the PCAA and Mr. Marcaccio have to be given an opportunity to make submissions in relation to it. I have sent a letter to each requesting their submissions.

Decision made: April 23, 2013



O. Brian Fjeldheim  
Chief Electoral Officer of Alberta

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<sup>3</sup> The Paul Marcaccio Professional Corporation ("PC") also made a contribution. The investigation demonstrated that the PC carried on business in Alberta in April 2012, and therefore no finding has been made against it.